UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- -x

In the Matter of:

LEHMAN BROTHERS INC.

Debtor.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 25, 2009

10:02 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Motion for an Order Modifying the Automatic Stay to Allow Advancement Under Directors and Officers and Fiduciary Liability Insurance Policies

HEARING re TPG-Austin Portfolio Holdings LLC's Motion to Compel Immediate Assumption or Rejection of Credit Agreement

HEARING re Debtors' Motion to Transfer Agents Funds in Connection with Resignations from Agency Positions

HEARING re Debtors' Motion Authorizing Lehman Commercial Paper Inc. to Settle Dispute with the Metropolitan Life Insurance Company

HEARING re Motion of the Tobacco Settlement Authority for an Order Compelling Lehman Brothers Special Financing Inc. to Assume or Reject an Executory Contract

HEARING re Motion of Howard W. Tomlinson for Relief from the Automatic Stay

HEARING re Debtor's Motion for Approval of the Sale of Debtor's Aircraft Pursuant to an Aircraft Sale and Purchase Agreement and Payment of Related Fees

HEARING re Trustee's Application for an Order Pursuant to Section 365(d)(1) of the Bankruptcy Code Further Extending the Time Within Which the Trustee may Assume or Reject Executory Contracts and Certain Unexpired Leases

HEARING re Notice of Hearing Regarding Motion of Carret P.T., L.P. #2 and Evansville Insurance Ltd. for Leave to Conduct Rule 2004 of Lehman Brothers Inc., Barclays Capital Inc. and SIPA Trustee

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Good morning. Be seated, please. Please proceed.

MR. KRASNOW: Good morning, Your Honor. Richard Krasnow, Weil Gotshal & Manges LLP on behalf of the Chapter 11 debtors.

THE COURT: Good morning.

MR. KRASNOW: Good morning. Your Honor, last night the debtors filed an amended agenda letter. It's at docket number 3215. And, with the Court's permission, I would propose that we just go down the agenda, if we may.

THE COURT: It sounds most efficient.

MR. KRASNOW: Your Honor, the first matter on the agenda is the debtors' motion for an order modifying the automatic stay with respect to the debtors' primary D&O and fiduciary policies. That is at docket number 2949.

Your Honor, this is a motion that was filed at the request of the respective insurers with respect to those policies who wanted to ensure that if they made payments under those policies and, in particular, the context was advancing monies with respect to defense costs, that it wasn't subsequently asserted that in making those payments, they violated the automatic stay to the extent that the stay was applicable. And therefore, we are before the Court today seeking that relief.

Your Honor, I think having described the rather narrow relief that we are seeking here, in light of various pleadings that were filed, correspondence that we received, discussions we have had with certain parties, I'd like to emphasize what we are not seeking and what we believe the Court would not be determining should Your Honor grant the relief requested.

We are not seeking and we don't believe the Court would be determining what claims, obligations there may be by parties including the insurers, the beneficiaries, those who are covered by the policies, anybody who has an interest in those policies. There would be no determination as to what those obligations and claims would be. It is merely a lifting of the stay.

Secondly, Your Honor, the Court, we do not believe, and we have not requested that the Court do this, determine whether or not in fact the proceeds of these policies would or would not be property of the estate. We are only seeking a modification of the stay to the extent it is applicable. We are not asking this Court to determine whether or not it is applicable.

As to that last point, Your Honor, there were two pleadings that were filed with the Court, one of which is styled as a limited objection by the "lead plaintiffs" who have requested that the proposed order that was attached to our

motion being modified so as to explicitly provide that the Court would not be making any determination as to whether or not the proceeds are property of the estate and that the rights and claims of all parties in interest in respect of that issue would be reserved. We have advised the lead plaintiffs that there language with some very minor nonsubstantive tweaks which we have shared with them is acceptable. They have advised us that our suggestive revisions are acceptable. New Jersey had filed a limited response in which they had indicated that they had no objection to the motion or the proposed order but if the proposed order were modified, they were reserving their rights. We have provided them with the revised order in a blacklined form. They have informed us that they have no objection to the entry of that order.

Your Honor, I have a copy of the blacklined order and I'd be prepared to share it with the Court if the Court wants.

THE COURT: Fine. Please approach with that.

MR. KRASNOW: Excuse me, Your Honor?

THE COURT: Please approach.

MR. KRASNOW: Thank you, Your Honor.

THE COURT: Thank you.

MR. KRASNOW: On that note, Your Honor, we would request, for the reasons set forth in our motion and the reasons I've stated on the record that the Court grant us the relief and enter the order as it has been revised.

THE COURT: I'm prepared to do that. I'm just going to ask if there's anyone either from the state of New Jersey or on behalf of the lead plaintiffs who has any comment. If the answer is no, I'll enter the order as modified. I see the committee is rising to perhaps say something.

MR. O'DONNELL: Yeah. Your Honor, Dennis O'Donnell, Milbank Tweed Hadley & McCloy on behalf of the committee. We have had discussions with the debtors about the subject of insurance and general insurance coverage in general and this motion specifically. The changes reflected in the order address our concerns at this point. We are reserving our rights, specifically, with respect to this determination down the road as it relates to excess coverage here. There are numerous excess policies and we expect this issue to arise again and again in the case. And as to the relief sought in this motion, we are not objecting. But as to any future relief on this subject, we're reserving our rights.

THE COURT: Fine. Well, Mr. Krasnow has made a very full record with respect to what I'm not deciding. And I confirm that I'm not deciding any of the things that he believes I'm not deciding and that the order is narrowly drafted and acceptable to the parties. And I will enter it as modified.

MR. KRASNOW: Thank you, Your Honor. And I believe the next item on the agenda is being handled by Mr. Lucas.

MR. LUCAS: Good morning, Your Honor. John Lucas for the Chapter 11 debtors. Your Honor, the second item on the agenda is the motion of TPG-Austin Portfolio Holdings to compel assumption or rejection of a credit agreement that was entered into by the debtors. And I don't know if movant's counsel is here today.

Your Honor, I don't know if you recall but previously this motion was on in December -- was on before December --

THE COURT: Mr. Kessler was here in connection with that, I believe.

MR. LUCAS: Correct. And at the first hearing on this, we had informed the Court that we would assume or reject by date certain; I believe it was mid-December. However, since that time, the parties have gotten together and we've revised the credit agreement. And, Your Honor, in short, the stipulation that we intend to hand up to the Court today provides that the parties will enter into a transaction amending the credit agreement and the supporting documents pursuant to a term sheet that's attached to the stipulation. And in short, there will be new funding provided in place of the revolver that was alleged to have never been funded where LCPI will provide thirty million dollars and Revere Holdings will provide fifteen million and TPG-Austin, an affiliate of TPG, will also fifteen million dollars under this revolver. And it's all set forth clearly in the stipulation.

THE COURT: Is there anything you wish to add or to say.

MS. MORGULAS: Again, Your Honor, Margreta Morgulas, Stutman Treister & Glatt for TPG-Austin. The debtors and our client are happy with the way this came out.

THE COURT: Good. That's fine.

MR. LUCAS: Thank you. And we'll hand up the stipulation at the end of the hearing, Your Honor.

THE COURT: Fine. I'll approve it.

MR. LUCAS: Thank you.

MS. MARCUS: Good morning, Your Honor. Jacqueline Marcus, Weil Gotshal & Manges for LBHI and the affiliated debtors. Number 3, Your Honor, is the debtors' motion pursuant to Sections 105(a), 363(b) and 541(d) of the Bankruptcy Code and Bankruptcy Rule 6004 for authority to transfer agents' funds in connection with resignations from agency positions. As you may recall, Your Honor, at the first day hearing with respect to LCPI on October 6th, you entered an order authorizing LCPI to resign agency positions and granted related relief with respect to transfers of funds that were in a designated agency account. And we had an account number in that motion and order. As the case has developed, it's become apparent that there's at least one other situation where LCPI had been acting in an agency capacity but the funds were not in that designated agency account. So the purpose of this motion

was to expand the relief granted on October 6th to cover the individual situation at issue today which is the Integral loan as well as other situations that might arise in the future.

What we have proposed in the motion and in the proposed order is a procedure with respect to other situations that might arise where LCPI would provide five business days' written notice to the creditors' committee and the U.S. trustee before it actually effected those transfers of assets so that the committee could take a look at what we were proposing and make sure it falls within the bounds of the order.

The motion was filed and served on March 11th, 2009. We inadvertently failed to file a notice of motion although the motion itself was marked with the hearing date and the objection deadline. On March 20th, in response to comments that we had received from Barclays Bank as well as from the creditors' committee, we filed a supplement to the debtors' motion which clarified some of the factual allegations in the motion and as well, we filed a revised form of the order which has been approved by the relevant parties as well as the creditors' committee.

So, unless you want to hear what the clarifications are, Your Honor, we'd request that you enter the revised order granting the relief.

THE COURT: I don't need to hear the clarifications because I read your supplement. And there are no objections to

this rather technical relief being requested. And unless there's someone who wished to be heard now, I'll enter the relief you seek. Hearing nothing, I'll enter the order that you've proposed.

MS. MARCUS: Thank you, Your Honor. Number 4 is the notice of debtors' motion for entry of an order pursuant to Sections 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019 authorizing Lehman Commercial Paper Inc. to settle dispute with the Metropolitan Life Insurance Company.

In that motion, we seek authorization to settle certain disputes between LCPI and MetLife with respect to certain securitization trusts. The motion was filed on March 2nd, 2009 and the objection deadline was fixed as March 12th although we have agreed to give the creditors' committee additional time.

Changes have been made to the proposed order at the request of the committee and the committee made a comment that we thought needed clarification but we have not filed the revised motion with the Court yet. No objections at all had been filed to the motion except there's been a recent development. And the recent development is that there's an issue with respect to three of the loans that are in one of the securitization trusts. PWC, in its role as administrator of a UK entity called Lehman Commercial Mortgage Conduit Ltd., has

raised an issue as to whether the transfer of those loans to LCPI might be a transaction under value under UK law. We are attempting to work that out with PWC. And in the interim, LCPI and MetLife have determined that it's probably more appropriate not to seek the Court approval of the motion at this point but to adjourn it to the next hearing on April 7th. And we hope to have resolved the issue with PWC or determine whether any other changes are necessary by that time.

THE COURT: Fine. So that even though this -- that was a report basically saying we want to adjourn this.

MS. MARCUS: I thought the Court might wonder why we were adjourning it if no objections were on file so I wanted to clarify it for the record.

THE COURT: I appreciate the clarification and this will be adjourned to April 7th.

MS. MARCUS: Thank you, Your Honor. Mr. Lucas will take over again.

MR. LUCAS: Your Honor, the next uncontested item on the calendar is the motion of Tobacco Settlement Authority for an order compelling Lehman Brothers Special Financing Inc. to assume or reject an executory contract. And I believe the movant's counsel is here.

Your Honor, we've been in discussion with the Tobacco Settlement Authority and we've agreed to a form of order where Lehman Brothers Special Finance will agree to the rejection of

this contract.

MS. ELLIOTT: Good morning, Kristin Elliott, K&L Gates on behalf of the Washington State Tobacco Settlement Authority. Debtors' counsel is correct that we have been in discussions since the filing of the motion. And the debtors have advised that Lehman Brothers Special Financing has determined to reject the agreement. And I have a form of revised proposed order that simply orders that the debtors are authorized to reject the agreement -- or rather, Lehman Brothers Special Financing is authorized to reject the agreement and that the Authority will have until the later of thirty days or the bar date established in these cases to file any proof of claim with respect to the rejection.

THE COURT: Okay. Mr. Lucas, have you seen that form of order?

MR. LUCAS: We have. And also the committee has previewed the order also.

THE COURT: And it's acceptable to everybody?

MR. LUCAS: It is to the debtors, yes.

THE COURT: Fine. To the committee?

MR. O'DONNELL: Here, too, Your Honor.

THE COURT: Fine. It will be entered.

MS. ELLIOTT: Your Honor, I'll leave the order with the debtors' counsel to hand up with the orders.

THE COURT: We'll add it to the pile.

MS. ELLIOTT: Thank you.

MR. LUCAS: Your Honor, the next item on the calendar is the Tomlinson lift stay motion which will be handled by my colleague, Diane Harvey.

THE COURT: Okay.

MR. CONE: Good morning, Your Honor. My name is John Cone. I'm counsel for Cone & Kilbourn, attorney for Howard Tomlinson. And I think that this matter has been fully briefed to the Court. And I don't want to take up too much time because I know you have a lot of things on your agenda today.

But simply put, Tomlinson alleged over a year and a half ago in state court that he had been fraudulently deprived of his house and that the scheme resulted in a joint effort by several parties, all of which are defendants. One of the parties is BNC Mortgage Inc. as they were called at that time. Their name has subsequently been changed for the bankruptcy proceeding.

BNC, in its brief to this Court, makes the unabashed statement that they were not affiliated in any way or associated with any of the other defendants. However, I have here today a cross-claim BNC asserted in the state court action claiming that they had entered into a mortgage/brokerage agreement with a co-defendant, Avenue Mortgage. So there was a linkage.

At any rate, BNC contended, without getting into all

of the facts, that Tomlinson had not pleaded, sufficiently pleaded, or set forth facts sufficient for the state court to come to the conclusion that it could be held liable for a fraud to Tomlinson. That motion was decided after argument, lengthy argument, in the state court. During that argument, it was pointed out exactly what allegations were made. The judge then reserved decision and about two weeks later wrote an opinion in which he decided that indeed a proper complaint had been alleged against BNC. One of the issues they raise here is that there's no real fraud and that has already been decided. The issue of whether, in fact, the fraud extended to BNC has been already decided by the state court as having been sufficiently pled.

THE COURT: Well, excuse me for just one second. To the extent this is actually relevant to the motion for stay relief, I'd like more clarification on what the state court did. What was the procedural motion that was argued and decided? It would surprise me if a preliminary procedural motion would result in a determination that there actually was fraud. Rather, it would seem to me that it would be a determination that there was a sufficient pleading of fraud. I just don't know what the procedure --

MR. CONE: That is correct, Your Honor.

THE COURT: Okay. Fine.

MR. CONE: That there was a sufficient pleading of

fraud.

THE COURT: So there was no determination on the merits.

MR. CONE: No. Oh, absolutely not. That would have to await discovery and trial. But at any rate, that same issue is being proffered once again that the pleadings simply don't add up to fraud.

THE COURT: What does that have to do with your motion for stay relief?

MR. CONE: Well, it's one of the things that they have raised in their motion. So that's the only reason I bring it up.

THE COURT: Why are you -- why is your client entitled to relief from the automatic stay at this point in this bankruptcy case?

MR. CONE: Well, Your Honor, I believe our client is entitled to relief because the only court that has jurisdiction over all of the defendants and which can obtain jurisdiction is a state court. The other defendants are not subject to the jurisdiction of this court. The sole issue in the case is one of state law not federal law. One of the prime cases cited to this Court in opposition, which is claimed as being wholly analogous, is, in fact, involving federal law not state law. And there are a number of cases that say if the issue was one of state law, the judicial economy and a resolution of the

facts can only be determined in state court, the stay should be lifted.

Now, I'm not going to go into all the Sonnax factors but I think we've detailed them fully in our brief. And I think that we comply with the vast majority of them. Insofar as the question of insurance is concerned, from the outset of the state court action, BNC has been represented by two law firms. The second law firm is not stylized as representing an underwriter but is, in fact, representing as counsel of record BNC, that, in effect, that retention was by a Fidelity underwriter of BNC.

Additionally, the only place a rescission of what took place at the closing can be had is in the state court where all the defendants are present. So, basically, those are our reasons, Your Honor.

THE COURT: Just as a matter of curiosity, if you were to file an amended complaint and leave BNC out, would you be able to obtain effective relief as against the other defendants?

MR. CONE: Well, one of the problems is that BNC cross-claimed against its own -- first they impleaded their own attorney. And they alleged their own attorney committed fraud on them. I don't believe we would have access to BNC's documentation which was promised to be given me a long time ago and never has been.

THE COURT: Well, couldn't you take third party discovery? Why would they have to be a defendant to take discovery of their documents?

MR. CONE: Well, if that isn't precluded by the state, we could do it. But they contend that we can't take any discovery. We were on the verge --

THE COURT: Well, is this --

MR. CONE: -- of court-ordered discovery when --

THE COURT: I just want to understand something. Is this motion that you've brought for stay relief designed to facilitate discovery as against BNC or is it designed to obtain coercive relief and damages against BNC?

MR. CONE: It's designed for both purposes, Your Honor.

THE COURT: Okay. And the question I was asking just as a point of clarification is whether you could obtain effective relief in this litigation that relates to a sale lease back of real estate if BNC were not a party.

MR. CONE: Well, I think -- I think we could obtain effective relief if BNC would agree that if the state court decides the mortgage should be rescinded then they'll go along with that. I don't know if the state court is empowered to rescind the mortgage which is one of the causes of action unless BNC is a party.

THE COURT: Okay. Thank you.

MR. CONE: Thank you, Your Honor.

THE COURT: Ms. Harvey?

MS. HARVEY: Good morning, Your Honor. Diane Harvey from Weil Gotshal representing debtor, BNC Mortgage LLC. Your Honor, the movant here bears the burden to establish cause and that burden has not been met. First, the plaintiff's allegations of wrongdoing are not evidence. No Court has determined the truth of any of these allegations and BNC has denied them in its answer.

One of the things that counsel has brought up is this concept of who owns the mortgage. I can state on the record, Your Honor, that BNC no longer holds this mortgage. And we believe that (1)that makes a big difference; and (2)there isn't any applicable insurance here to cover should BNC have to litigate in the state court. And we believe that that's obviously very significant here in determining whether the automatic stay should be lifted.

THE COURT: Ms. Harvey, I read your papers and something occurred to me as I was reading through the statements of counsel concerning the financial condition of BNC. It appears that BNC is effectively out of money, is that right?

MS. HARVEY: Yes, Your Honor. There are certain intercompany claims that will need to be assessed and obviously prosecuted. And right now, it's too early in the bankruptcy

process to be able to assess in a realistic fashion what the success of those claims will be and what dollar amounts.

THE COURT: Well, frankly, one of the questions that came to my mind as I was reading through this is why BNC is in Chapter 11 at all as opposed to Chapter 7. It appears that there's no realistic reorganization potential for BNC. And it also occurs to me that if judgments were obtained in the full amount by default which is one of the adverse consequences of granting stay relief assuming that there's no potential for those judgment to be borne by other affiliates and this is truly a debtor that would not be subject to consolidation risk, why are we spending any time on this case?

MS. HARVEY: Fair point, Your Honor. I guess there are accounts receivables in the amount of approximately 465,00 dollars. The intercompany claims are in the millions. And again, because the debtor was filed in January and there needs to be an assessment of what those claim amounts potentially can be, certain of the intercompany claims are not against -- or are against nondebtors. And so, there might be at least a likelihood of potentially getting back millions into the estate. But at this point, it's too early to know.

THE COURT: Okay. I didn't mean to break into your argument. It was just something that was occurring to me as I was reading through your papers. I was wondering why we were trying to protect this empty pocket.

MS. HARVEY: I anticipated that you would be asking that question, Your Honor, and my answer is my answer.

THE COURT: I accept your answer.

MS. HARVEY: Your Honor, because this is fully briefed, let me just make a couple of points. These are unliquidated, unsecured claims. The courts in this district have held that relief from the automatic stay with respect to such claims that the stay should only be lifted in "extraordinary circumstances". And here, there aren't such extraordinary circumstances. This is not an instance where's there's already been a judgment made and there is a -- the judgment has been secured by a superseding bond so that the plaintiff could actually pursue monies. As I said, there's no applicable insurance here. And, as I stated on the record, BNC no longer owns this mortgage.

Weighing all of the Sonnax factors -- and I'm not going to through all of them. They're fully briefed, Your Honor -- we believe that the automatic stay should not be lifted with respect to this.

THE COURT: Thank you. Anything more?

MR. CONE: Your Honor, if --

MR. KOWLOWITZ: I'm sorry, yeah. Yes, Your Honor. I represent a defendant in the state court action.

THE COURT: Please identify yourself.

MR. KOWLOWITZ: Pardon me?

THE COURT: Please state your name.

MR. KOWLOWITZ: Oh, I'm sorry. Andrew Kowlowitz from Furman Kornfeld & Brennan. We represent a defendant named Daniel Chan in the underlying state court proceedings. Mr. Chan was BNC's settlement agent at the closing. And we also filed an application in opposition to Tomlinson's motion to lift the stay.

It's our argument and we believe that if the stay were, in fact, lifted, Attorney Chan would be severely prejudiced as a result of the lifted stay. First of all, BNC defaulted.

THE COURT: What standing does Mr. Chan have to raise questions about BNC's stay? I understand you might be benefited if the stay remains in effect but --

MR. KOWLOWITZ: Well --

THE COURT: -- I'm curious as to why you have a litigable position with respect to the automatic stay since you are not a direct beneficiary of the stay.

MR. KOWLOWITZ: Well, the fact is, Your Honor, we have viable cross-claims against BNC. We were BNC's agent at the closing. We signed the closing documents as we were instructed to do.

THE COURT: Maybe I'm missing something. Do you want the stay lifted or do you want the stay to remain in effect?

MR. KOWLOWITZ: We want the stay to remain in effect

because BNC is not a party to the state court litigation. My client will be essentially left blowing in the wind. If they were unable -- if they did not appear in the action, if we're unable to get discovery from them, it will be very hard for me to mount a defense.

Not only that but most of the defendants in the state court action haven't appeared. Essentially, my client would be the only solvent defendant left at the end of the day with a judgment if we went to trial against them. So it would be grossly prejudicial to Attorney Chan to lift the stay.

Now, when you weigh the equities on the other side of the coin, if the stay remained in place, plaintiff won't even be harmed at all. The fact of the matter is Mr. Tomlinson and his family are living in this house right now rent free, mortgage free. They're not paying anything. So they're getting a windfall. If this stay remains in place, they continue to get their windfall. So where's the harm or the prejudice to plaintiff?

And the last thing being, and I think it's one of the factors the Court considers when determining whether or not to lift the stay is we're really at the starting point of the state court litigation. True, we've briefed a 3211 pre-answer motion to dismiss. We haven't gotten to foreign discovery. There's been one deposition. I believe not everybody has exchanged documents. We have a very long road ahead of us, a

very long road ahead of us. And the fact of the matter is BNC is a critical player in this litigation and my guy is really an ancillary player. If BNC is out of the litigation or somehow defaults, he's going to be left flapping in the wind, the only solvent defendant here.

So I think when you weigh the equities, it falls out on the side of keeping the stay in place.

THE COURT: Okay. Thank you for your argument.

MR. KOWLOWITZ: Thank you.

MR. CONE: Your Honor, if I could just state two things. We never received any paperwork regarding Chan. So this is the first notice I've had that they were opposing lifting the stay. I'm not quite sure I understand the arguments about being left in the wind if, in fact, the stay is lifted because BNC would be another defendant in the action with potential assets.

But the other issue I would like to raise, if the Court decides not to lift the stay, we would like some guidance as to permissible discovery of BNC. As Your Honor said before, you'd be able to get discovery; there shouldn't be a problem with that. We've been told by BNC's counsel that you can have discovery. So these are -- I'm not a bankruptcy specialist. I've tried many cases in the Southern District but not bankruptcy cases, Your Honor. So we'd like the Court's guidance.

THE COURT: Okay.

MR. CONE: But we do believe the stay really needs to be lifted. The only other thing is the state court judge took the unusual step of assigning himself to this case fast track all the way through. There's no jury. It's going to be tried within six months, Your Honor. Thank you.

THE COURT: Anything more, Ms. Harvey?

MS. HARVEY: I'm sorry, Your Honor. Diane Harvey for Weil Gotshal. Just to clarify for the record, plaintiff's counsel has never asked me or anyone else at Weil Gotshal with respect to discovery of BNC. And just for the record also, BNC does not have any employees at this point. Thank you.

THE COURT: Does BNC have separately retained counsel in the state court litigation?

MS. HARVEY: Yes, they do, Your Honor.

THE COURT: And it's not Weil Gotshal?

MS. HARVEY: No, Your Honor.

THE COURT: All right. I looked at the papers in preparation for the hearing and noted the efforts of counsel both for the movant and for BNC to identify and analyze applicable Sonnax standards as it relates to this case. I am satisfied, based upon my review of the papers submitted, that the Sonnax factors properly applied to this dispute weigh in favor of not granting stay relief. And I adopt the reasoning of debtors' counsel in opposition to this motion.

I also note, as a result of colloquy with counsel, that it appears that BNC may not be a critical and necessary party to the granting of effective relief in this litigation. I take no position on that because, frankly, it's simply an informal statement that was made as a result of questioning from the bench. Whether or not BNC is truly in the middle of this or not remains to be determined.

But to the extent that there is the ability to sever BNC as a party defendant and proceed with the litigation and provide parties in interest with whatever discovery is presently available by agreement, it occurs that may be an efficient way to deal with the state court litigation.

If the parties can't reach agreement on that, it's always possible for counsel for the plaintiff, Mr. Tomlinson, to bring a further motion for stay relief relating to the discovery question. That would seem to me to be unnecessary and wasteful but that is an available option in the event the parties are unable to reach an agreement.

I note Ms. Harvey's comment that BNC is effectively defunct at this point having no employees. And I suspect a limited ability to access materials that may be relevant to this particular transaction. If, in fact, there are no documents, discovery is, for all practical purposes, a simple matter of saying we have no responsive documents. If there are documents that are accessible and can be produced with

relatively little cost and difficulty, that may be ultimately a less expensive and more efficient way to deal with this as opposed to having further motion practice.

The motion is denied and I'll entertain an order from debtors' counsel and suggest that it be submitted on notice to the moving party. That's resolved.

MR. CONE: Your Honor, if I could offer just one comment --

THE COURT: It's too late.

MR. CONE: No. I'm just -- counsel for BNC in the state court, their client counsel, Sills Cummins, claims they have the entire BNC file.

THE COURT: Well, then you can talk to them about that. I'm not making any determination regarding discovery in a state court matter that, at least as to BNC, remains subject to the automatic stay.

MR. CONE: Okay.

THE COURT: If anybody involved in the Tomlinson matter wishes to be excused, you may be excused. If you want to stay and observe the balance of the agenda, you're welcome to do that.

MR. LUCAS: Your Honor, John Lucas.

THE COURT: Yes, Mr. Lucas?

MR. LUCAS: Your Honor, the next item on the calendar is the debtors' motion for approval of sale of an aircraft.

Your Honor, my colleague, Shai Waisman, is in the conference, I believe, discussing things with one of the prospective purchasers. And perhaps we could move to the LBI calendar and I can check to see where they are in that process and move this piece to the end?

THE COURT: All right. So we're going to defer the helicopter sale motion to some time at the end of the calendar?

MR. LUCAS: Correct, if that's okay with Your Honor.

THE COURT: That's fine with me.

MR. WILTENBURG: Good morning, Your Honor. David Wiltenburg, Hughes Hubbard & Reed representing James Giddens, the LBI trustee. We have a short calendar this morning, one uncontested matter and one contested matter. The uncontested matter is the trustee's application pursuant to Bankruptcy Code Section 365(d)(1) for an order further extending the time within which the trustee may assume or reject executory contracts and certain unexpired leases. And the grounds for the present motion to extend continue to be as they were before, namely, that given the history of the case in the first sixty days, it was Barclays' option to designate executory contracts for assumption and assignment and, thereafter, the project of examining what remained and evaluating what remained for potential value to the estate commenced and is continuing. And indeed, there are ongoing negotiations with respect to certain of these contracts that have proved valuable to attempt

to realize value on behalf of the estate. And accordingly, the motion requests a further ninety day extension. It's not opposed.

THE COURT: It's unopposed and it's granted.

MR. WILTENBURG: Thank you, Your Honor. The next matter, the contested matter, is a 2004 application. And probably we'll hear from the moving party and the trustee's response will be handled by my partner, Sarah Cave.

THE COURT: It seems very quiet. Is somebody moving this motion forward?

MR. MCNALLY: Pardon me, Your Honor. I was gathering --

THE COURT: There was a pregnant pause.

MR. MCNALLY: Yes, Your Honor, yes. Your Honor, Stephen McNally, the firm Wuersch & Gering on behalf of the movants which are an entity I'll call Carret and Evansville. They are holders of what were foreign exchange trading accounts with Lehman. We have filed a motion seeking discovery from the SIPA trustee and from Barclays --

THE COURT: Before you proceed, I just want to break in and ask you something about Carret --

MR. MCNALLY: Yes.

THE COURT: -- because before proceeding with this, I want to assure myself that I don't have a discloseable --

MR. MCNALLY: Conflict?

THE COURT: -- relationship? Do you know if Carret was ever a portfolio company of Castle Harlan?

MR. MCNALLY: I do not, Your Honor, but I suspect I should inquire.

THE COURT: Excuse me?

MR. MCNALLY: I suspect that I should inquire.

THE COURT: I would like you to inquire only in this respect. A number of years ago, and I don't believe that it's a conflict but I believe it is discloseable, I was involved in certain transactional work that involved the sale of a business that had the same name. And at the time that business was owned by a private equity firm that was a client of my old law firm. I participated in the transactional work associated with the sale of that business. I don't think it's a matter that affects my ability to fairly and impartially handle this rather narrow discovery dispute. But I'd like to know whether or not it's an issue at all. It may just be the same name.

MR. MCNALLY: If Your Honor could repeat the name of the affiliation that -- the owner that you suspected was a related entity?

THE COURT: Castle Harlan, C-A-S-T-L-E, Harlan, H-A-R-L-A-N, two words.

MR. MCNALLY: All right. What I would request, Your Honor, is that you simply handle the next matter on the agenda. I will inquire of my client and perhaps signal to counsel if we

have an answer.

THE COURT: Now, I believe that even if the answer is yes, it's not an issue. But I wanted, if, in fact, the answer is yes, to make appropriate disclosure so that parties who might be affected by this, including the SIPA trustee, could make a determination as to whether or not this was anything that might result in a reassignment of this one dispute to another judge. I doubt that it's going to get to that level. It was at least five years ago. But it caught my eye.

MR. MCNALLY: Is that fair enough, Your Honor? I'll inquire and let the Court know? Thank you very much.

THE COURT: That's fine.

MR. LUCAS: Your Honor, we're requesting if we can take a fifteen minute recess to finish our discussions in the conference regarding -- and then we would like to --

THE COURT: That's fine.

MR. LUCAS: -- come back and go forward with the motion with the result of the conference.

THE COURT: Fine. Let's take a break until 11:05. That's a twenty minute recess.

MR. LUCAS: Thank you, Your Honor.

THE COURT: Fine.

(Recess from 10:45 a.m. until 11:10 a.m.)

THE COURT: Please be seated. Is it helicopter time? Is it helicopter time or Carret time?

MS. CAVE: It's Carret time, Your Honor. Sarah Cave from Hughes Hubbard on behalf of the LBI trustee. And I believe Mr. McNally is prepared to address the Court.

THE COURT: Fine.

MS. CAVE: Thank you.

MR. MCNALLY: Yes, please, Your Honor. It appears that in 2004, Your Honor may have had a hand in representing Castle Harlan in connection with the transaction where Carret was sold to a series of family trusts that are controlled essentially by my client, Alan Quasha & Company. So there is the relationship that Your Honor recalls. It is, Your Honor was quite accurate, five years ago. And in discussing it with my client, my client has no reservation whatsoever about Your Honor adjudicating the pending motion.

THE COURT: Fine. Let's proceed then.

MR. MCNALLY: All right, Your Honor, again, my clients are two, Carret and Evansville Insurance. Both are controlled by the same series of family trusts that are essentially corporate parent of them both, the Alan Quasha & Co. series of family trusts.

They were both holders of foreign exchange accounts with Lehman Brothers in the pre-petition period. In the case of Evansville, on deposit in the account was approximately 980,000 dollars (sic) of euros -- or 980,000 euros, I'm sorry, that had been the proceeds of a closed-out foreign exchange

trade.

In the case of Carret, there was approximately, I believe, 6.8 million dollars, in a combination of U.S. treasuries and cash. The U.S. treasuries were collateral that had been posted with Lehman in connection with the foreign exchange trading that was done on behalf of Carret. And the two million or so in cash was the proceeds of a foreign exchange trade that had been closed at some point pre-petition.

In both the cases of Evansville and Carret, my clients had made demands pre-petition for the return of the collateral in the accounts and the cash in the accounts and in both cases had been assured that the funds would be returned or the collateral returned pre-petition. But somehow in the morass of the last days of the last week of the pre-petition period, those instructions for the transfer of those accounts were not completed.

My client independently made many efforts over the period of time from the date of the filing and in the months afterwards to contact the Lehman people that were still there to assist, some Barclays people, to try to get information about what happened with this transfer, why didn't it get completed, where's the money, what's the status of our accounts.

THE COURT: Tell me something --

MR. MCNALLY: Yes.

THE COURT: -- about the transaction that was supposed to have taken place. Assuming that the transaction had been closed in accordance with the expectations of your clients, what would have happened to the 980,000 euros and 6.8 million dollars of --

MR. MCNALLY: Treasuries and cash, yeah.

THE COURT: -- cash and treasuries.

MR. MCNALLY: They would have been transferred to my client.

THE COURT: So the ultimate resting place was an account someplace outside of Lehman controlled by your clients?

MR. MCNALLY: Yes.

THE COURT: Okay.

MR. MCNALLY: That's where it was supposed to have gone. That was the instruction received by Lehman. That was the instruction that pre-petition e-mails indicate was being executed by Lehman but none of that evidently happened to completion. We have, really, what are conflicting stories about what happened to the money. In fact, the stories are all over the board as to what happened to the cash or the securities. But in a nutshell, some of the money might have ended up in some intermediary account where funds went to disappear in that last week on the way out but then got stopped in this intermediate place. And that can be -- that may be the case, Your Honor, but we'd like to know exactly what those

intercompany transfers were so we can know what happened to our customers' account.

But on top of that, and what is particularly troubling is that it seems that all of Evansville's euros and a significant portion of Carret's treasuries were transferred to Barclays and remained there as far as we can tell from the information that we've been supplied. And I don't know where all this leads, Your Honor.

The objection of Lehman indicates that Carret and Evansville are simply the squeaky wheel, we are trying to jump the gun and jump the list of parties to receive distributions from the estate. I submit, Your Honor, that at this point in this case, it's seven months since the case was filed. We filed our motion two months ago. We agreed to one adjournment so that we could be supplied with information on a consensual basis that we're not -- you know, we're far enough along that we're entitled to get some concrete answers to very discreet targeted questions about what happened with our specific accounts, that we even know what the nature of our clients' claims are. We don't, at this point. We don't know whether we have securities. We don't whether we have cash. We don't where it is.

So I understand that Your Honor is going to have some predisposition to not let a squeaky wheel like my clients' being right now interfere with the orderly liquidation of the

assets of Lehman and the orderly administration of the claims process. But we have very real and we think very discreet questions about what happened to our clients' money. We're perfectly willing to be as helpful as possible in limiting those inquiries into the very narrow areas that would answer the questions that we have, the very discreet questions that we have.

THE COURT: Let me ask you this question --

MR. MCNALLY: Yeah.

THE COURT: -- only because you referenced a possible predisposition. I wasn't aware that I had any but let's just assume that there's something about your question that may be an accurate reflection of what a hypothetical jurist might have in his or her mind.

MR. MCNALLY: Okay. Fair enough, Your Honor.

THE COURT: There's a claim administration process that the trustee follows as it relates to all of the proofs of claim that are filed in this massive case which the trustee notes is the largest broker/dealer liquidation in the history of the world, the universe, and suggests that there is a parade of horribles aspect to what you're asking for because if you, on behalf of Evansville and Carret, have the opportunity to pursue particularized discovery as it relates to a claim before there's any objection to the claim, before there's any issue as to the claim, before issue has been joined, in effect, there's

a floodgates argument that the courtroom will be filled with similarly situated creditors who will be saying well, what about me, what about me. We want information, too, and that an orderly statutory process for managing the case will be adversely affected.

In effect, what's different about -- what, if anything, is different about the Evansville and Carret claim that distinguishes it from this parade of other claimants that may come in to One Bowling Green and fill the hallways attempting to gain court time so that they can have the same kind of discovery you're seeking?

MR. MCNALLY: I understand, Your Honor, and that's fair. What I think differentiates our claim is that, number one, it's patently not a general unsecured claim. We are not a supplier of goods and services to Lehman. And not only that, but we are not the counterparty with Lehman to some Lehman-sponsored contract that has a claim in which Lehman is failing to meet its counterparty obligations. And I think Your Honor can surmise at this point that a good portion of the claims that must be extant and outstanding against Lehman consist in those two groups of parties, at least some of the larger claims, certainly in the second class.

We are a customer specially protected under SIPA with identifiable securities and identifiable cash in our accounts except they can't tell us what happened to it. So I think we

sit at the highest tier of the group of what might be considered in the unsecured creditor class of Lehman. And we have very discreet questions related to instructions that were not executed pre-petition or -- we didn't just simply sit there and wait and file a claim post-petition and then start becoming a squeaky wheel. We had very specific instructions that we were told by Lehman were being executed to transfer these funds. And in that process, our accounts got lost or misplaced or sent all over. And on top of that, Your Honor, we have a very real question as to whether, in fact, we have the right to get our money right now because it's sitting at Barclays not at Lehman anymore.

So I think all of these questions are unique enough, we have been patient enough in the presentation of them to the Court that they deserve at this point some attention from Lehman's side and from Barclays' side.

THE COURT: Okay.

MR. MCNALLY: Thank you.

MS. CAVE: Good morning again, Your Honor, Sarah Cave from Hughes Hubbard on behalf of James Giddens, the LBI trustee. And I think Your Honor has really struck right to the heart of the trustee's objection to this motion and really, as the Court explained in his January 14th hearing on a similar -- dissimilar, but another Rule 2004 request, that at this stage of the litigation proceedings exceptional circumstances must be

shown in order for Rule 2004 discovery to proceed. And it's the trustee's position, and I haven't heard anything here today that demonstrates that those extraordinary circumstances exist in this situation.

THE COURT: Let me break in for a second now --

MS. CAVE: Sure.

THE COURT: -- because one of the things that occurs to me in terms of case administration is that the Evansville and Carret discovery request is, in effect, comparable to the complaints that are beginning to crowd the adversary docket in the Lehman case where parties who are looking for comfort with respect to identified securities are bringing lawsuits saying I want my securities back, I want my property back. And I haven't done a complete inventory of the number of these cases, but there are quite a few of them.

From a case administration perspective, one of my concerns becomes okay, let's just say that I find that there isn't good cause for 2004 discovery because -- and you've used my words -- an extraordinary showing hasn't been made. But what's to prevent Evansville and Carret From leaving court, going back to their offices and preparing an adversary and taking discovery in the context of that adversary. That wouldn't be 2004 discovery, but it would be, in its own way, a less favorable outcome in terms of case administration and inefficiencies. I mean, there are ways to get at this

information one way or the other. And if one door is closed, another door may be opened.

MS. CAVE: I think, Your Honor, that that's a valid point, and that's I think a concern for the trustee in terms of administering the estate as well. But we're now being faced with, as you said, people who feel that they have been waiting long enough. But the fact of the matter is that the initial bar date for the claims process only recently passed on January 30th, the final bar date -- so claims continue to be filed every day -- through June 1st of this year. So at the moment we know that there are 85,000 claims or more, but we don't know the universe.

The trustee has begun -- has implemented a process for determining those claims and has begun to determine claims and we're into the several hundreds now at this point. And it's difficult to ask people to be patient and respect the process, but I think that's what we're asking the Court to endorse, the trustee's belief that the claims process that we have in place is the way that people need to proceed. Otherwise, we're spending all of our time here in front of you, as pleasant as that is, we're spending time litigating or responding to motions and not dedicating all of our resources to the claims process.

THE COURT: I understand, but I really don't have a predisposition to finding one way or the other on this, even

though that suggestion was made in the comment made by movant's counsel. My predisposition, if there is such a thing, is for the case to be managed as efficiently as it can be, notwithstanding its massive size.

MS. CAVE: Um-hmm.

THE COURT: And so part of my concern, as I debate this openly with both sides, is what's the most efficient way to get to a resolution of a very discrete issue. And it raises in my mind the question, why is it that counsel for Evansville and Carret has had to go to the lengths of filing a motion, and it's not one that can be resolved, it's actually one that's being litigated in open court, why can't we find out what happened to the 908,000 euros and the 6.8 million dollars worth of treasuries and cash. It seems like it should be a relatively simple question, but there must be some reason why it's not. Why is it not a simple question?

MS. CAVE: It actually is a simple question, Your Honor, and I was surprised to hear counsel say that he doesn't know where his money is, because what we did in the period that we had the adjournment was we undertook to locate or to find out information about where their accounts were, where those amounts were, and we provided that information to Mr. McNally. And still he has insisted with proceeding with the motion. We suggested that an adjournment, pending the trustee's determination of his client's claims, was an appropriate way to

resolve the motion, but that was not how he wished to proceed. So we did in fact -- he knows -- we've told him where the property that his clients are claiming, we've told him where it is.

THE COURT: And is it definite? Is it declarative? Is it indisputable as to where all this property is? Who has it? Where is it?

MS. CAVE: Well, with respect to -- give me just a moment, Your Honor. With respect to Carret, several of the positions have been credited to accounts that are with the LBI trustee, that are within the trustee's control. And then two of the amounts were credited to an account at Barclays Capital, which is not a Carret account, but we know the name of the account where it is at Barclays. And with respect to the amount that was in Evansville's account, the 908,000 euros, that was a failed transaction and it's in another account that the trustee has control of.

THE COURT: Well, then I guess I'm missing something in terms of what we're here debating. This is a request for 2004 discovery. You're telling me that informally the trustee, through counsel, has provided, in substance, the information that both Evansville and Carret have been seeking, presumably in the form of a letter or an e-mail or some other transmission of information which Evansville and Carret should be relying on in your view, is that correct?

MS. CAVE: Correct, yes.

THE COURT: So why are we here?

MS. CAVE: I think Mr. McNally can speak to that, but my understanding is that they are seeking all documents that relate to the history of their accounts and why they failed. And then they're also seeking a deposition of the trustee or of a person at Barclays with knowledge.

THE COURT: And I take it that the trustee's position would be that as to this additional document discovery and requested deposition, that that would be burdensome and unnecessary at this point and would interfere with orderly case administration?

MS. CAVE: Exactly, Your Honor. There's a time and a place for that sort of discovery. And pursuant to this Court's order setting up the claims process, as well as SIPA, that takes place after a determination has been made, at which point a claimant who is unsatisfied with that determination has all the rights of discovery.

THE COURT: Okay. I understand.

MS. CAVE: Thank you.

MR. STERN: Your Honor, Jack Stern from Boies, Schiller on behalf of Barclays. When we received this motion, the first thing we did was to call up Carret's counsel, express our understanding of their customer's anxiety, and try to provide as much information as we could. With respect to

Evansville, we explained that that account is not a Barclays account. We explained that in error certain statements that were sent to customers in September had the Barclays address. But a subsequent letter which we provided to counsel, that went out to customers in December, explained that those statements had been sent in error. And we've attached that letter explaining the situation to customers to our papers.

As to Carret, we told Carret's counsel that this is not a Barclays account, Barclays did not assume foreign exchange accounts, but that we would work with the SIPA trustee to find as much information we could about the customer's account. We did that. The SIPA trustee did an exhaustive investigation of the facts, and we found out that what happened -- and we've explained this in our papers and to counsel, that inadvertently, around September 19th at the time the SIPA proceeding began, this account went into the Barclays column by mistake instead of the LBI column. And that was then later corrected. So the Carret account is an LBI account.

Now, we also explained that as a result of this operational mistake, certain securities that belonged in the Carret account at LBI were mistakenly transferred by JPMorgan Chase to Barclays. And the proceeds of those securities went to a Barclays inter-company account. However, none of that, as we've explained to counsel, has any bearing on the Carret account, because the Carret account was properly credited with

the proceeds. While all of this operational minutia may be of interest, it really has no bearing on their rights. And at this point, given the exhaustive efforts of the trustee and Barclays, we really don't see that 2004 discovery is going to add anything.

THE COURT: So after hearing all this, why do we need all this discovery now?

MR. MCNALLY: Your Honor, if I may. The -- if I were to quote counsel -- exhaustive efforts of the SIPA trustee with the munificent assistance of Barclays, amounted to a reply during this month delay that, in the case of Carret, was a single e-mail. And in that e-mail what we were advised was that yes, the treasuries, which were the collateral posted by Carret, were in the possession of Lehman at the time the case was filed and they had subsequently, in each instance, because it was multiple treasuries, matured and there were some crediting of interest related to those maturities. And that's it with respect to Carret. With respect to Evansville, which was a separate e-mail, we received a one sentence reply that said that well, it looks like your money got lost in this inter-company account. I'm summarizing.

Now, that may all be accurate, Your Honor, but I submit that it is not a good faith effort to supply information that might be enlightening to Carret or Evansville. Nor was it what was readily accessible to the trustee. In my response to

one of the e-mails, Your Honor, which we sent by letter, I asked a very simple question: Well, in this case, if you are aware that these treasuries matured and that this interest was credited, as you say, you must have been referring to some document that was supplied to you by the SIPA trustee or by Lehman or someone else. Can you turn over what you were looking at? No. Not a single document was turned over, Your Honor, in response to these requests. And even Ms. Cave acknowledges that when it came to the maturity of the treasuries, it looks like those funds were deposited in Barclays. But why? Your Honor, these are my client's money.

And as far as the Evansville transaction goes, Your Honor, I hope you were as confused as we were by the explanation you received from counsel. It looks to us like a significant portion of Evansville, or all of Evansville's money, is now on deposit in Barclays in a transfer that, whether it happened inadvertently or intentionally, we have now the right to reclaim our client's customer funds from Barclays.

And all we're asking, Your Honor, okay, because counsel got into how far we need to go, we certainly, it appears, do not need a deposition of the SIPA trustee or probably anyone else, but certainly what was reasonably within the control of counsel or the SIPA trustee were the documents concerning these transfers, where the money went, so we can reconstruct the path of these funds. If at the end of that

inquiry, with a reasonable reply to our request, not a perfunctory response, Your Honor, that brushes us off -- we served 400 some odd people with this motion in order to get here and speak to Your Honor. It's a very burdensome thing for my client to have done to even appear before the Court and present these arguments. So they've gone a long way to find out this information.

Your Honor's right, it's seven months in. We should be getting from the SIPA trustee, at this point, and his counsel, more than perfunctory brush-off responses.

THE COURT: Okay. Anything more from the trustee?

MS. CAVE: Your Honor, just briefly, Sarah Cave again from Hughes Hubbard for the trustee. With respect to counsel's comment that his client's property was in an account and got lost somewhere, certainly those were not the words that I used, and I identified specifically the account into which we believe that those amounts had been transferred. And with that we would rest on our papers. Thank you.

THE COURT: Anything more from Barclays?

MR. STERN: Just one more word for Barclays. The suggestion that Barclays has his client's property is just without any basis. We've explained that pretty clearly in our brief submission, Your Honor. And as to the inter-company transfers, there is a payable from Barclays to LBI, but again, all of that has no bearing on this customer and we don't think

they have the right to that.

THE COURT: Okay. It's obvious to me from the papers that I've read and from the argument that counsel for Evansville and Carret is seeking, through informal means and now through 2004 discovery, the very same sort of information that plaintiffs have been seeking at various times since the commencement of these cases, but bringing separate adversary proceeding complaints focused on attempting to locate and obtain the return of identified securities.

As I sit here at this moment, I'm unable to give you the total number of such litigations that have already been commenced, but I believe it's some number between ten and twenty separate cases. As a matter of case administration, I think that it is probably a bad idea for parties like these movants to need to go to the trouble of having to bring a 2004 request to obtain answers to questions that they're really entitled to. I also think it's a bad idea for these parties to have to bring separate lawsuits.

So in a balancing of harms analysis, in an effort to come up with some model that can be generally applied to this case, I find myself in the difficult position of considering whether 2004 discovery under these facts makes sense. It really doesn't from the point of view of case administration. For reasons that I pointed out in an earlier question, while 2004 may be a generally available tool, it is a blunt

instrument and it creates enormous burdens for the trustee, and candidly, it also creates unnecessary burdens for the moving parties. It's an available remedy, but the most effective remedy is an e-mail that produces a response which could be we can't get to this now, can you give us an extra sixty days so that we can deal with this when we have more time.

I don't presume to become involved in the back and forth that attorneys engage in as they seek to gain traction and attention in a case this large. But I do think it is not desirable for parties like Evansville and Carret to need to go to a 2004 request to request a deposition, whether or not it's going to be pursued or not is kind of beside the point, and to seek documents through coercive means when I think well represented parties can probably get to the truth a lot more conveniently and efficiently by simply cooperating with each other. I encourage that.

For purposes of today's motion however, I am denying the 2004 request without prejudice, in all respects, to further efforts that may be made by Evansville and Carret to obtain the information that it seeks. That information is probably best obtained by talking to counsel, picking up the phone, sending an e-mail. And if that effort proves to be unsuccessful, doing what other parties have done, which is to bring an adversary proceeding. I recognize that that is an unfortunate Whack-a-Mole response in which you whack the mole on one side of the

game board only to have a mole jump up in another place and have to whack again.

But that's how the system works. Step one is to try to do it cooperatively. Step two, I suppose, is the 2004 request, which is now being rebuffed, not necessarily because it's the wrong approach, but because I believe it to be wrong for this case. I believe it is inappropri8ate for every claimant in an LBI case to have what amounts to coercive discovery rights before the claim resolution process has had a full and fair opportunity to run its course. But impatient litigants have recourse, and that's to start an adversary proceeding which is certainly an available option. Expensive, inefficient, to be sure, but available absolutely. That's not to say that such an adversary proceeding would be one that would get past a motion to dismiss. That's not to say that such an adversary proceeding would have merit. But it's an available option.

The motion is denied with the comment that it would be desirable for the parties to try to work this out if they can. And if they can't, I'll see you again some other day.

MR. MCNALLY: Thank you, Your Honor.

MR. WAISMAN: Good morning, Your Honor. Shai Waisman, Weil, Gotshal & Manges on behalf of the LBHI debtors. Your Honor, the only remaining matter on the agenda is the motion of CES Aviation V LLC to sell a Sikorsky S-76C+

helicopter. I'd like to take Your Honor through where we are on that motion. And then subsequent to that, if I could maybe present to the Court a bit of a status conference on where the debtors are in the SunCal matter in California.

THE COURT: I'm interested in both.

MR. WAISMAN: Your Honor, the debtors filed the motion to sell the Sikorsky helicopter and proposed a sort of truncated auction process whereby bidders could submit their bids, execute asset purchase agreements, and we would be prepared to proceed with an appropriate sale today. Bids were due seventy-two hours before the commencement of this hearing today, so effectively on Sunday morning.

Sometime ago, the debtors executed an asset purchase agreement for the helicopter with MAC Aircraft Sales, LLC, and they are represented today on the telephone by their attorneys. That bid was for 2,795,000 dollars. The debtors subsequently received and executed a counter-bid from General Helicopters International, LLC, GHI, for three million dollars. And that bid was received this past Friday evening. On Sunday morning, MAC, the original bidder, counter-bid. And they counter-bid with a bid of 3.1 million dollars. They already had 500,000 dollars in an escrow account, and Monday morning wired the balance of the purchase price to an escrow agent to be held pending the closing and a transfer to the debtors.

Yesterday we received an objection filed by GHI,

effectively complaining about the process and the fact that they were surprised that MAC could have topped up its deposit on a Sunday. In fact, MAC didn't have to top up the deposit. While the deposit requirement was only for five percent of the purchase price, MAC from day one had deposited with an escrow agent the deposit of 500,000 dollars.

Nevertheless, when we arrived at the hearing today, we spoke to GHI's attorneys and they presented to us -- and they are also represented here in court today by their attorney, James Heiser. They represented to us that they would like to present to Your Honor a counter-bid of 3.2 million dollars without any deductions and a closing today, if that was possible, so effectively 100,000 dollars more than the MAC bid.

During this morning's session I went offline and spoke to MAC's attorneys. Needless to say, they insist that they are the highest and best bidder, they complied with the procedures and have wired the entirety of the purchase price, and to preserve the integrity of the process, they should be awarded the helicopter.

Notwithstanding that though, and as a sign of good faith, they have increased their bid to 3.225, so 3,225,000 dollars. They have already purchased the purchase price so they would close today, or if that's not possible because of logistics, as soon as possible. And just to clarify the record, there would be no claims back against the estate for

the increased amount of the bid. With MAC's new bid at 3,225,000 dollars, and given that they have complied with the auction procedures, the debtors would proceed with the MAC Aircraft Sales bid as modified by the record at this hearing and would seek to close that as soon as possible with Your Honor's approval.

THE COURT: Okay.

MR. HEISER: Good morning, Your Honor, Jim Heiser from Chapman and Cutler on behalf of General Helicopters International, LLC. We're prepared to go to 3.3 million dollars today for the helicopter. And I think that because the MAC bidders have increased the price that we're sort of back into the auction process now. And we're prepared to go for 3.3 today to close the transaction.

THE COURT: Well, this is all very interesting, isn't it?

MR. WAISMAN: Your Honor, if I may?

THE COURT: It must be quite a helicopter.

MR. WAISMAN: Your Honor, I believe it's actually a misstatement to say that we're back in the bidding process. There were bid procedures that were published to the word. The debtor spoke to a number of parties about this extensively. Everyone was very aware of the procedures. And as Your Honor is aware, the debtors have tried very hard to market an entire portfolio of aircraft assets that some of these same parties

are involved with. And if we don't preserve the integrity of the process, I'm not sure we get to some happy counterparties, who may be interested in other assets, feeling that somehow the process we propose doesn't really matter and what you do is you show up before the judge and just throw out your last minute offer and we turn this into an auction before Your Honor. The increase, MAC's increase, was a show of good faith. It should not be held against them. They, in fact, complied with the procedures and the aircraft should be awarded to them.

THE COURT: Okay.

MR. HEISER: Your Honor, if I could just be heard on that for a moment?

THE COURT: Sure.

MR. HEISER: We have real issues with the process that was employed in this matter. But I think at this point now the debtors would be receiving the 3.225 million dollars, assuming that Your Honor approved their bid today, so I think that we have gone beyond what the terms were that were agreed to at the process on Sunday. So I think that the 3.3 million dollars is probably in the best interest of the estate. And without going into the whole issue of the process that happened over the weekend, which we do have issues with, we think that the 3.3 million dollars, because everyone's here, they're on the phone, if there's a desire to increase the bid we can do that, the MAC people can do that, but at this point I think

that the 3.3 million is the highest offer and that that's what should be approved. The terms are the same; we're just disputing the price here. So as the high bidder, I believe that GHI's bid should be

MR. MARCUS (TELEPHONICALLY): Your Honor, may I have the floor?

THE COURT: Counsel for MAC, you're coming through faintly.

MR. MARCUS: Let me see if I can turn the volume up. Is that better, Your Honor?

THE COURT: That's better.

MR. MARCUS: Okay. Thank you. My name is George Marcus. I'm an attorney in Portland, Maine at Marcus, Clegg, & Mistretta. They represent MAC Aircraft Sales. Our position is as stated by the debtor that before we complied with the auctions terms, and in compliance with those terms we made the high bid of 3.1 million dollars. The objection voiced by the other bidder, we think, is not plausible. The objection being that although we had 500,000 dollars on deposit -- it was sufficient to cover the deposit requirement for our 3.1 million dollar higher offer by a significant margin, by the way. Although we had complied in that respect, there seemed to be a contention that the auction terms required putting up yet another deposit on top of the one that was already more than sufficient to cover the increased bid. We don't think that's a

plausible interpretation of the auction terms, and we think the Court should quickly overrule that.

Now, as far as today is concerned, obviously our position is that the helicopter should be awarded to MAC Aviation who had the high bid price in the auction. Now, as an accommodation to the debtor, we have expressed an increased bid, we obligated to close on it today. But we would strongly prefer that the Court award the sale at the original price to preserve the integrity of the process.

Now, I will point out one more thing, which I think the Court should take into account, that is that if the Court declines either to award the sale at 3.1 million or 3.225 million, then we will be pursuing claims against the estate. And so the possibility of accepting a 3.3 million dollar offer, without having to deal with other claims against the estate is not there, making that a much less attractive offer to the estate, in my judgment. I believe that the debtor said it correctly that it's going to be in the process of auctioning off assets and the integrity of the process ought to be honored. The Court should award the sale at 3.1 million dollars, but as stated, we'd like to bring this process to a conclusion and we are prepared, if the Court is not inclined to award the original bid, to proceed with the 3.2 million dollar offer, but that is our last bid.

THE COURT: I thought your last bid was 3.225.

MR. MARCUS: Yes, 3.225, I somewhat misstated it, that's correct.

THE COURT: Okay. I understand your position, I think. Your position is you wanted a 3.1 but you're willing to go to 3.225 if you get it?

MR. MARCUS: Yes, and if we get it at either price, we will waive any objections, appeals, administrative claims against the estate, but we are not prepared to make those waivers if we don't get it at either price.

THE COURT: Okay. I understand your position. Anything more from GHI? Anything more from the debtor?

MR. HEISER: Yes, Your Honor. We believe that the Court has broad discretion in this process, and we believe that the cases support the fact that the judicial procedure that the Court employs in this case is -- I should say that the procedures that were presented in the motion have never been approved by this Court. And so I think that the Court should take an independent look at what happened and really focus on whatever the higher bid is. I think that MAC knew that we were bidding and the debtor has reserved its right to accept or reject bids for any reason. So I don't know if it's fair for the debtor to be able to exercise its discretion to reject the MAC bid or anyone's bid, and then when we come in with the higher price to say that there's a reason why that's not appropriate.

Now, if the Court wishes, I can get into the real issues that we have with the sale and with the MAC bid itself. Just briefly, we never got notice of the increase in the MAC bid, or we would have certainly been there on Sunday morning with the increase in the bid. Rather, what it appears had happened is MAC was notified of our increase in the bid on Friday night and then subsequently increased its bid, but we didn't have any notice of that. And I have my client here to testify to that. So I don't think that it's fair that MAC can be preferred and have an opportunity to increase its bid. But all of those issues go away here today, because everyone's on the phone, everyone has an opportunity to bid whatever they think is appropriate.

And also we had tried to contact the debtor as soon as we got notice so that the reply says that we had an opportunity to increase our bid on Monday. Now, that means two things. One, it means that we could have increased our bid on Monday and the debtor might have accepted it. That was after the bidding deadline. So to me that suggests that the process was -- the debtor could have exercised its discretion, as it was entitled to do in the motion, to later accept a higher bid. And so I think that that validates what we are doing here today.

And finally, there's this issue of the deposit. And I think that this goes to the validity of the MAC bid that was

made on Sunday. If we assume that the procedures that were set forth, the proposed sale procedures, are appropriate, subpart (d) provides two things. It says that when you make a higher bid you have to make, quote, "an increased deposit to reflect an amount equal to five percent of the modified purchase price and two, a deposit in the amount included in the offer." So to me that means that you have the original deposit which MAC would have made on March the 5th of 500,000 or whatever it was, and then they would have had to make an increased deposit with that on Sunday prior to the deadline in order to make a valid deal.

And what footnote 4 of the debtor's reply says is that they even recognize this and they did a second amendment, which was dated as of March 23rd, which was after the bidding deadline. So the increased deposit did not come in until after the bidding deadline on Sunday. And therefore, we don't think that the 3.1 million dollar bid of MAC was ever valid in the first place. So if we're going to stick with the notion that the bidding deadline was Sunday morning, then the real valid bid is the GHI bid on Friday night.

Now, we're here to bid the price that we think is appropriate, with everyone here in full disclosure, at 3.3 million dollars. And so we would ask that the Court approve that bid here today. Thank you.

MR. DUNNE: Your Honor, may I be heard?

MR. MARCUS: If I could reply, Your Honor?

THE COURT: Actually, you may reply. It's just that Mr. Dunne, who's here for the creditors' committee was standing up and I was about to recognize him for his comments and then you can say whatever you want on behalf of MAC.

MR. DUNNE: For the record, Dennis Dunne from Milbank, Tweed, Hadley & McCloy, LLP on behalf of the official creditors' committee. The short answer, Your Honor, is that our first principals are to see the largest possible recovery to the estate. So while it's a close call, we're on the side of accepting the 3.3 million dollar bid. And let me go through the reason --

THE COURT: Tell me why it's a close call.

MR. DUNNE: The --

THE COURT: Because at some level you're also principled, is that it?

MR. DUNNE: Because at some level -- I have been frustrated at a number of deals where the procedures spill over -- notwithstanding what they say -- spill over into a courtroom auction. And I don't think it's ideal to have those auctions spill over into the courtroom all the time. In this case those were not court approved --

THE COURT: Well, I consider it to be not ideal all of the time for matters of this sort to spill over into the courtroom.

MR. DUNNE: And I agree with that. And that's why it's a close call, Your Honor. But I do think, at the end of the day, we're here to maximize the value. This was a truncated process. They were not court approved procedures. To deal with Mr. Waisman's concern, maybe on future sales we should have court approved procedures that would spell out precisely that we're not going to have this happen. But given where we are today, and the fact that there were subsequent modifications, on both sides, to the bids since the Sunday bid deadline -- and as recently as this morning -- that I think that we should continue it one more round. It's unfortunate it's in front of Your Honor, but that's the committee's position.

THE COURT: I said that I was going to hear from counsel from MAC. Then we will hear from counsel for the debtor.

MR. MARCUS: Thank you, Your Honor. Just a couple of comments. Number one is MAC had no advantage or special terms or anything else in this auction. The reason that we found out about the competing bid is that we picked up the phone and asked. And I can't think of any reason that the other bidder could not have done the same and then submitted another bid. So we complied with the process procedures, and they are not intrinsically unfair. One might devise a different scheme. One might devise an auction in the court. But the scheme

devised by the debtor is not, per se, unfair. We just have somebody who didn't put in the higher bid.

Now, the post-bidding increase and offer to increase the deposit, and even this offer that I'm making today, I made to accommodate the debtor, not because we feel we are required to, nor because we feel the need to in order to comply, but because we are trying to act in good faith. We were trying to close a deal where we won an auction in good faith. And it seems that improper that we should have to go to step one. Having won the auction, now close it. But we're big boys and we're prepared to proceed. But none of the post-auction things that we are offering and doing, as I said before, are requirements of the auction. It's because we're trying to act in good faith to the Court and to the debtor.

And so again, I come back in saying that I believe the integrity of the process is important in this case. I listened in on the prior hearing, I understand how big this case is, and if there's anything of value here it's honoring these processes, and particularly we know, of course, insuring there's been fair compliance by all sides and I think we've done that. Thank you.

THE COURT: Thank you. Mr. Waisman?

MR. WAISMAN: Thank you, Your Honor. Shai Waisman again for the debtors. Your Honor, where we are at the moment is the debtor, in its business judgment, proposed procedures

that it thought would maximize the value of this asset, based on its experience in prior transactions. The debtor was right. It garnered significant interest for an asset that has lost a lot of value over time, and it proceeded in good faith. The procedures were followed. MAC did pick up the phone and ask if anybody submitted an alternate bid. MAC did send in, by e-mail, a topping offer on Sunday morning, and MAC prosecuted its interest in this helicopter in accordance with the procedures.

Where that leaves GHI, unfortunately, is in a position of an aggrieved bidder. It does not have standing in the first place to object at the sale. It has come in, it has expressed an interest. MAC has stepped up to the plate and done the right thing, in the view of this estate. And in our business judgment we believe the integrity of the process requires us to pursue the 3.225 bid from MAC.

THE COURT: At some point we're going to stop hearing from everybody. But I guess you're going to have the last licks.

MR. HEISER: One last point, Your Honor. We do think that the issue of maximizing the value to the estate is what's important, that because of the increase in the MAC bid to 3.225, that that puts us back into the process. And I just want to make my last point that the obligation of the people conducting the sale is to conduct the bidders to see if they're

going to increase the price.

And my last point is that we believe the MAC bid did not comply with the procedures because it did not remit the required deposit, required by subpart (d) of the procedures before 10 a.m. on Sunday. So we think that the procedures that are going on here today are what's appropriate and reflect the will of all the parties and the highest and best value of this asset. Thank you.

THE COURT: This has turned into something of a free-for-all, hasn't it? The history of the debtors' efforts to sell excess aircraft, within the context of this bankruptcy case, has been less than glorious. It is my distinct recollection that in prior transactions involving fixed wing aircraft, that there were various deals that were made, approved, and then renegotiated the wrong way because the pricing was moving south at a time when parties who had already agreed to the transaction were threatening to walk away from the deal and forfeit their deposits.

Apparently, helicopters are a lot more attractive in the market right now, because we have the opposite situation. Instead of parties seeking to renegotiate deals for their benefit, we have what amounts to an unstructured auction process that's not presently covered by any court approved procedures. It's an interesting situation, to say the least.

I understand the committee to be saying -- and it's

not a surprising proposition -- more is better. And I think that they're right, more almost always is better in the context of a bankruptcy sale. But I'm also concerned that, particularly in a case with this much visibility, and with asset dispositions that may take place over the life of the case that are in prospect, that it's also important for the sale process to be principled. Which gets to the question of whether or not the sale procedures that were set forth by the debtor, without prior approval of the sale procedures, constitute procedures that are sufficiently fair, reasonable, and worthy of judicial respect that they should be strictly enforced.

Ordinarily, unless a set of sale procedures has been approved by the bankruptcy court, they simply represent an effort by the debtor to regularize a process that would take place in the ordinary course in a nonbankruptcy setting in the marketplace. In that respect, proposed sale procedures are no more entitled to a judicial imprimatur than what goes on at a garage sale. I am, however, going to treat the proposed sale procedures as being the baseline test for determining whether or not what has happened prior to today's hearing is fair, relative to fundamental due process standards, even though it's completely informal.

I read the reply papers that were submitted this morning by the debtor before the pricing moved. And the

fundamental argument made was that the deposit of 500,000 dollars, made at the time of the original bid, was sufficiently robust, relative to the five percent requirement, that there was no need to increase the amount of the deposit in order to satisfy the bid procedures.

But I was also struck by the fact that the debtor itself recognized that the five percent deposit was probably insufficient, and by conduct, modified the deposit requirement by having a gross-up, additional amounts were put in as a deposit. This, to me, suggests -- and I mean no disrespect in saying this -- that to some extent these sale procedures were being modified on an ad hoc basis as the process was going along. Perhaps, in part, because to the surprise of the debtor -- I'm not suggesting a state of mind -- this turned out to be a much more active two-way auction process than might have been anticipated.

In that respect, the proposed sale procedures have been ignored by the debtor itself. Within the seventy-two hour period prior to the sale hearing, an auction has been taking place. In fact, it's been taking place without authority in the courtroom. So for all practical purposes, the baseline proposed sale procedures no longer seem to be governing the conduct of the parties. The fact that the price now being offered by MAC, at 3.225 million dollars, is 125,000 dollars more than the amount which was proposed over the weekend,

demonstrates that within the seventy-two hour period prior to the sale hearing, we are engaged in an auction process without authority to do so.

To me this suggests that there is no principled way, at this point, to deal with the sale of this helicopter unless the Court imposes what I'm going to impose right now. It's now almost 12:15. I'm going to extend the auction period until 2 p.m. MAC and GHI may each, in their sole discretion, stand on their existing bids -- but their existing bids may not be withdrawn -- or they may increase their existing bids, if they choose to. They will be sealed bids in the sense that this will not be an auction process in the sense of 25,000 dollar increments.

The debtor will be advised before 2:00 -- let's pick a time, let's make it 1:45 this afternoon -- privately as to your last best bid which can be no less than, in the case of MAC, 3.225 million dollars, or in the case of GHI, 3.3 million dollars. But as far as I'm concerned, the sky is the limit. The best bid will be determined in the discretion of the debtor in consultation with the creditors' committee. The bid, in order to be the best bid, must be fully funded by the close of business today. There can be no closing conditions. And I'll see you at 2:00.

MR. HEISER: Your Honor, just to clarify, so it's the exact same purchase and sale agreement, just with the price

changed?

THE COURT: Correct.

MR. HEISER: Thank you.

MR. WAISMAN: Your Honor, could I beseech you for one additional requirement to your bidding requirements?

THE COURT: What's that?

MR. WAISMAN: That the parties waive any claims against these estates?

THE COURT: Oh, yes, absolutely. There are no claims against the estate. I'll see you at 2.

MR. WAISMAN: Thank you, Your Honor.

MR. HEISER: Thank you, Your Honor.

(Recess from 12:14 p.m. until 2:01 p.m.)

THE COURT: Be seated, please.

MR. WAISMAN: Afternoon, Your Honor.

THE COURT: So what happened, Mr. Waisman?

MR. WAISMAN: Shai Waisman, Weil Gotshal Manges on behalf of the Lehman debtors. Your Honor, in accordance with the Corut's bidding procedures, two sealed bids were received prior to the 1:45 bid deadline. MAC submitted a bid of 3.4 million dollars for the helicopter. GHI, General Helicopters International, submitted a bid for 3,426,000 dollars. With that, the debtors conferred with the official committee of unsecured creditors and together support the GHI bid of 3,426,000 dollars subject to confirmation by GHI on the record

that all the other terms and conditions of the executed purchase agreement stand and that the balance of the purchase price will be funded today.

THE COURT: Let's get that confirmation.

MR. HEISER: Good afternoon, Your Honor. Jim Heiser from Chapman & Cutler on behalf of General Helicopters International. I can confirm on the record that we have received -- that we have wired the funds to Insured Aircraft Title Service in Oklahoma City per the contract, the previously executed aircraft purchase contract.

THE COURT: So the money is already there?

MR. HEISER: Yes, Your Honor.

THE COURT: Sounds like that condition has been satisfied. Is counsel for MAC still on the telephone?

MR. MARCUS: Yes, Your Honor. George Marcus on the phone.

THE COURT: I take it that what's been reported on the record here is accurate in that you made a bid of 3.4 and the high bid is 3.426, correct?

MR. MARCUS: Your Honor, I can only speak to the bid that we submitted. We don't know what the other bid was apart from what's been reported today. But that is accurate in terms of the bid we put in.

THE COURT: All right. And that you are waiving any claims against the estate as a result of your participation in

this auction process?

(Pause)

THE OPERATOR: Your Honor, this is Sigrid Walker (ph.). I just lost Mr. Marcus. He evidently disconnected himself, hopefully by accident.

THE COURT: I hope it's by accident, too. Please bring him back on the line.

THE OPERATOR: Yes, Your Honor.

(Pause)

THE OPERATOR: Your Honor, Mr. Marcus has now rejoined us.

THE COURT: Welcome back.

MR. MARCUS: Your Honor, thank you. I'm sorry. I don't know what happened but we got disconnected.

THE COURT: I was in the process of confirming that MAC, by virtue of participating in the auction process and having submitted a sealed bid, also waives any claims against the estate with respect to the auction process at this point.

MR. MARCUS: Your Honor, we do waive claims against the estate but I would like the opportunity to argue that the Court should award the bid to MAC in any event. But we understand that there's no claim against the estate arising by reason of the auction process.

THE COURT: That's fine. The process has run its course in terms of arguing higher and better bids. It's tough

to do when both the debtor and the creditors' committee, after confirming, have concluded that the GHI bid is the highest and best bid. But if you wish to say something, this is the opportunity to do that.

MR. MARCUS: Well, thank you. I'd just add that the higher bid is the one submitted by GHI is higher by 26,000 dollars. I guess I go back to saying that I don't believe that the waiver of claims precludes me from urging the Court, having gone through this process, to simply go back and accept the bid that was greatly submitted because MAC participated in that process in good faith fairly and whatever concerns there may be with the debtors' conduct at the auction, it seems unreasonable that MAC should be penalized. MAC has incurred a significant amount of expense in participating in the bidding including inspecting the aircraft and taking other steps and feels terribly aggrieved by the process because it appeals did apply. Now, while I don't have any entitlement to make a claim, I would like to know if the Court would entertain an administrative claim because MAC has incurred a substantial amount of money and has benefited the estate by an expenditure by driving the bid process up. So while, as I said, I acknowledge waiver of entitlement, I think that it nevertheless is appropriate to recognize the contribution to the estate if the Court is inclined to award the bid as originally made.

THE COURT: Well, if I understand your argument,

you're acknowledging that you have no claim against the estate and have confirmed on the record that any such claim has been waived. But notwithstanding that waiver, you're asking for me to tell you now that I will permit you to bring some kind of as yet unspecified administrative claim against the estate for having participated in a process that produced increased value to the estate. Do I have that correct?

MR. MARCUS: Yes.

THE COURT: I'm not inclined to take away the benefit of the waiver by giving you what amounts to a backdoor opportunity to pursue claims against the estate. And so, I accept the waiver. I enforce the waiver and confirm on the record now that there is no entitlement to bring any claim against the estate for administrative expense claims or for substantial contribution claims or for any other kind of claim. By virtue of participating voluntarily in an auction process which you had, through your client, an opportunity to win by simply putting in a bid that was a thousand dollars more or even 500 dollars more than the bid that was put in by GHI, you had every opportunity to successfully obtain the aircraft in question and lost fair and square. And good luck to you with other aircraft acquisitions.

MR. MARCUS: Thank you.

MR. HEISER Thank you, Your Honor.

MR. WAISMAN: Your Honor, one of my colleagues is

revising our proposed form of order and we will submit that to chambers today so that we can, in fact, effect this transaction --

THE COURT: Fine.

MR. WAISMAN: -- today.

THE COURT: Now, I think I'm also supposed to hear something about SunCal before I let you go.

MR. WAISMAN: If Your Honor would like, I would provide a brief status update on the SunCal matters. As Your Honor may recall --

MR. MARCUS: Your Honor, may I disconnect?

THE COURT: That's fine.

MR. MARCUS: Thank you.

MR. WAISMAN: As Your Honor may recall, on March 10th, there was a hearing scheduled before Judge Smith in California with respect to the SunCal debtors to the motion to implement certain auction procedures. As a result of the hearing that day as well as a conference had between Your Honor and Judge Smith, that hearing and the consideration of the auction procedures motion was adjourned to March 19th. Both parties were enjoined from filing further pleadings in either court with respect to the auction procedures motion. And on the very next day, we had a status conference with Your Honor, telephonic conference with Your Honor, where both parties -- all the parties participated and Your Honor reported to all

parties that you had conferred with Judge Smith on these matters.

So the adjourned hearing took place on March 19th with respect to the auction procedures. And at that hearing, the parties mutually agreed to further adjourn to March 24th. As well, Lehman Ali, a nondebtor Lehman entity, agreed to the primary terms of a DIP financing for certain of the SunCal entities. That DIP financing will be in the amount of aggregating 1.5 million dollars. And the main terms will include a approved budget with specific line items as to which the monies are to be expended and for no other purpose, superpriority liens and claims for Lehman Ali, the DIP to mature upon a confirmed plan or a sale of any of the DIP collateral and an interest rate of ten percent. To accommodate a fast moving situation, this was read into the record and is subject to the parties subsequently confirming the documentation. And, of course, that is taking longer than expected.

THE COURT: Usually does.

MR. WAISMAN: So, on March 23rd, which was four days subsequent to that hearing, Lehman Ali did, in fact, fund the DIP. And the documentation is still being worked on.

As for the equitable subordination litigation, that continues. SunCal filed a motion in the California court for leave to file the second amended complaint. That request was

granted by the California court. Lehman has until April 23rd to respond. And the hearing, as well as the status conference, on that litigation is scheduled for May1 21st.

Lehman also filed notices of appeal with respect to certain rulings by the California court, in particular, the ruling that the equitable subordination litigation as to LCPI, which is a debtor here, could continue or could be filed and continued despite the applicability of the automatic stay as well as SunCal's request to transfer LCPI's liens on SunCal's assets to the SunCal debtors.

That aside, Lehman and SunCal have met face to face in California to try and reach a global settlement. Those meetings have taken place over the last couple of weeks. They continued as late as yesterday. And yesterday would have been the adjourned hearing on the auction procedures motion and the parties agreed in light of the substantial progress made in negotiations to adjourn further the auction procedures motion to an April 9th date. And that's where we are.

THE COURT: Thank you for that report. I do have one question, however, as a result of what I've heard. Is Lehman taking the position that the district court or bankruptcy appellate panel -- I'm not sure which entity will be dealing with the appeal from Judge Smith's rulings in connection with the ongoing prosecution of the equitable subordination complaint. I assume it's going to go to the BAP, correct?

MR. WAISMAN: That is correct, Your Honor.

THE COURT: Is Lehman taking the position that the proper court to consider the applicability of the automatic stay as to Lehman is the California bankruptcy court or the BAP? Is there, in effect, an election of jurisdiction there for that determination? Because it seems to me, at least in theory, that there is continuing jurisdiction here to consider that question. I'm only asking that question rhetorically. I'm not necessarily calling for a response on the record now. You're welcome to make one but you're also free to duck it if you wish.

MR. WAISMAN: Your Honor, your comments are very much appreciated. I think Your Honor appreciates the sensitivities of the situation which is one of the reasons that led us to submit a pleading, draft pleading, by letter two weeks ago rather than actually file it on the docket and proceed with the hearing. There are two courts, two bankruptcy judges, with significant matters pending before both. And Lehman has tried from the beginning and continues to try to not step on anyone's toes. Your comments, Your Honor, are well taken. That issue is being considered but because of the time in which we had to appeal, if -- or we had to file the notice of appeal to preserve that right. I wanted to advise the Court that the notice had been filed. A further determination as to how to proceed on that appeal or other relief in this jurisdiction is

pending.

THE COURT: Fine. Well, I assume this is a fluid situation. I was just reacting to what I heard.

MR. WAISMAN: Thank you, Your Honor.

THE COURT: Is there anything more on SunCal?

MR. WAISMAN: That is all.

THE COURT: Good luck in getting that resolved if you can. Is there anything more for today's hearing?

MR. WAISMAN: I believe that's the end of the agenda.

THE COURT: GHI, good luck with your helicopter.

MR. WAISMAN: Thank you, Your Honor.

THE COURT: We're adjourned.

(Whereupon these proceedings were concluded at 2:17 p.m.)

I N D E X

R U L I N G S

I N D E X, cont'd

R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
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